

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CLAIMS PRO, INC.	:	CIVIL ACTION
v.	:	
AXIS SURPLUS INSURANCE COMPANY	:	No. 14-2008

MEMORANDUM

Ludwig, J.

November 24, 2014

Plaintiff Claims Pro, Inc. moved to dismiss the complaint under Fed. R. Civ. P. 12(b)(6). Jurisdiction is diversity, 28 U.S.C. §§ 1332, 1441. An order granting the motion was filed October 17, 2014. Upon further consideration, it appears that any amendment of the complaint would be futile.

The removed complaint, filed April 4, 2014, asserts that defendant Axis Surplus Insurance Company was in breach of its insurance policy because of its refusal to pay attorney's fees and costs incurred by Claims Pro in the underlying state court action. Axis defended under a reservation of rights to decline coverage and retained counsel. Claims Pro's personal attorney also participated in the defense – for which Claims Pro sued for reimbursement.

All of the litigation was resolved, and Claims Pro concedes it paid no monies and assumed no liability for the release of the claims against it. As stated in the complaint, Claims Pro “performs billing, collection and consulting services for medical offices,” and did so in this instance for at least 10 years. C. P. complaint, ¶ 7. The core of the state court lawsuit involved a “Billing and Collection Services Agreement” between Claims Pro and one of its clients.

Given that the case against Axis was fully and finally settled, no basis for a duty to indemnify Claims Pro can now be said to have arisen or to continue to exist. Such a duty was extinguished by the settlement.

This memorandum accompanies the October 17, 2014 order (doc. no. 11). Its effect is to dismiss this action in its entirety with prejudice.

BY THE COURT:

/s/ Edmund V. Ludwig
Edmund V. Ludwig, J.